STATE OF MINNESOTA

IN SUPREME COURT

A21-1411

In re Petition for Disciplinary Action against
Elizabeth W. Bloomquist, a Minnesota Attorney,
Registration No. 0157685.

O R D E R

The Director of the Office of Lawyers Professional Responsibility has filed a petition for disciplinary action alleging that respondent Elizabeth W. Bloomquist has committed professional misconduct warranting public discipline—namely, failing to diligently pursue criminal cases that were within her jurisdiction as city attorney, such that many were barred by the statute of limitations, and failing to comply with Minn. Stat. § 611A.0315 (2022). *See* Minn. R. Prof. Conduct 1.3, 8.4(d). Respondent and the Director have entered into a stipulation for discipline. In it, respondent waives her procedural rights under Rule 14, Rules on Lawyers Professional Responsibility (RLPR), and unconditionally admits the allegations of the petition. The parties jointly recommend that the appropriate discipline is a public reprimand.

The admitted allegations of the petition establish that between 1989 and 2019, respondent worked as the city attorney for the City of Fairmont. Beginning in 2012, respondent's previously full-time legal assistant started taking on other duties, affecting respondent's ability to efficiently process criminal cases within the City's jurisdiction.

After the City decided in 2019 to terminate respondent's employment (for reasons unrelated to the misconduct described in the petition), it became evident that she had not resolved, by making a charging decision, a large number of police reports—over 135. Some 51 of those cases were at that point time-barred, including 26 that could otherwise have been charged out or further investigated. In addition, 27 of the time-barred cases were domestic assault cases, with respect to which a prosecutor has a duty under Minn. Stat. § 611A.0315, to notify the victim that the prosecutor has decided to decline prosecution or to dismiss the criminal charges against a defendant, and to inform the victim of information relating to orders for protection and restraining orders. Because of her failure to take action on these matters, respondent failed to comply with the requirements of the statute. Therefore, respondent's misconduct involved a lack of diligence, in violation of Minn. R. Prof. Conduct 1.3, and conduct prejudicial to the administration of justice, in violation of Minn. R. Prof. Conduct 8.4(d).

The purpose of attorney discipline "is not to punish the attorney, but rather to protect the public [and] the judicial system, and to deter future misconduct by the disciplined attorney as well as by other attorneys." *In re Fairbairn*, 802 N.W.2d 734, 742 (Minn. 2011) (citation omitted) (internal quotation marks omitted). We consider four factors in determining the appropriate discipline: "(1) the nature of the misconduct; (2) the cumulative weight of the disciplinary violations; (3) the harm to the public; and (4) the harm to the legal profession." *In re Nelson*, 733 N.W.2d 458, 463 (Minn. 2007). Beyond those four factors, we consider the discipline imposed in similar cases and any aggravating

or mitigating circumstances that may exist. *In re Tigue*, 900 N.W.2d 424, 431 (Minn. 2017).

Typically, a public reprimand is appropriate for significant lack of diligence relating to a small number of client matters. *See*, *e.g.*, *In re Kraker*, 953 N.W.2d 527, 527–28 (Minn. 2021) (order) (imposing public reprimand for failing to act with reasonable diligence in representation of one client, failing to promptly comply with the client's requests for information, and failing to explain a matter in order to permit the client to make an informed decision); *In re McCormick*, 951 N.W.2d 742, 742–43 (Minn. 2020) (order) (imposing public reprimand for failing to diligently pursue one client matter, failing to keep the client reasonably informed about the status of the matter, failing to respond to the client's reasonable requests for information, failing to place a $500 advance flat fee into a trust account absent a written fee agreement signed by the client, and failing to appear for a pre-trial conference). But in this matter, respondent's neglect appears to have encompassed as many as 135 potential criminal matters, extending over a period of 7 years, and more than 50 of which became time-barred. As the Director acknowledged in an informal memorandum she provided with the parties' stipulation, this case is one of first impression: we have not addressed a situation in which a government attorney neglected a large number of charging decisions in this manner.

The Director further explained her position that a public reprimand is appropriate in this matter for a number of reasons, including (1) that respondent was in an untenable position; (2) that respondent has demonstrated remorse and accountability during the

investigation; (3) a lack of serious harm caused by respondent's misconduct; and (4) that respondent is no longer practicing law and might not return to the practice of law.

We ordered the parties to file memoranda (a) discussing whether respondent's position as the city attorney for the City of Fairmont when she committed the misconduct is an aggravating factor that the court should consider when deciding on the appropriate discipline; (b) discussing what factors should be considered, including or in addition to those mentioned in the Director's previously-submitted informal memorandum, when deciding on the appropriate discipline, and providing appropriate and additional context to those factors; and (c) showing cause, if any there be, why respondent should not be suspended, given the nature and scope of the admitted misconduct.

In their memoranda, the Director and respondent each take the position that respondent's position as the city attorney when she committed the misconduct should not be considered an aggravating factor. In particular, the Director argues that previous cases in which we have viewed an attorney's position as a prosecutor to be an aggravating factor typically involve intentional conduct resulting in an abuse of power or denial of constitutional rights. We agree with the Director's characterization of our precedent: the cases in which we have emphasized prosecutor status as an aggravating factor have involved the types of misconduct that the Director indicates. And it is appropriate that that should be so: abuse of power by a prosecutor involves a violation of the public trust that mere incompetence or lack of diligence does not. *See In re Serstock*, 432 N.W.2d 179, 180, 185 (Minn. 1988) (observing that "lawyers who violate the public trust deserve severe disciplinary sanctions" and imposing 2-year suspension on deputy city attorney who,

among other misconduct, dismissed or delayed disposition of traffic tickets brought to him by individuals to whom he had preexisting debts). Likewise, a prosecutor's misconduct that results in the state-sponsored denial of constitutional rights is particularly harmful to the profession. *See In re Pertler*, 948 N.W.2d 146, 146–47 (Minn. 2020) (order) (disbarring attorney who, as a county attorney, failed to disclose known police misconduct, failed to implement a *Brady* policy, and failed to train staff, ultimately resulting in the dismissals of 19 pending criminal cases and the retroactive dismissal and expungement of eight cases that had resulted in conviction).

In response to our inquiry about what factors to consider when deciding on the appropriate discipline, the parties discussed and provided additional context regarding the tenability of respondent's position. Respondent indicated that after her assistant was reassigned, she received only about 20% of her assistant's time, and no other staff resources were provided to respondent to help her manage her caseload. The Director indicated that "[t]he record supports that respondent did raise the reduction in staff as an issue with the City." But the parties did not provide further details about what steps respondent took to notify the City that she lacked the resources to make charging decisions on the matters that were her responsibility. And respondent admitted that she should have made more proactive efforts to obtain additional resources to handle all the cases. We recognize that attorneys employed by the government may have limited control over their caseloads and support staff, which can lead to unique challenges in discharging their professional obligations. But based on the parties' submissions, we are unpersuaded that respondent's situation substantially mitigates her misconduct.

We have recognized that remorse can be a mitigating factor. *See In re Strunk*, 945 N.W.2d 379, 386 (Minn. 2020); *In re Garza Peña*, 942 N.W.2d 751, 751 (Minn. 2020) (order). In her original informal memorandum, the Director indicated that respondent had demonstrated remorse during the investigation of this matter. In their memoranda in response to this court's order, the parties reiterated that respondent has acknowledged the wrongfulness of her misconduct and shown remorse and accountability for her actions. We see no reason to doubt the parties' representations under these circumstances. Accordingly, we will consider respondent's remorse as a mitigating factor.

In their memoranda, the parties also discuss the extent of harm caused by respondent's misconduct. The Director asserts that in her review of the facts of this matter, she "was unable to point to an instance of provable serious harm to individuals." Specifically, she points out that if respondent had made the affirmative decision to decline to prosecute, it would have been within respondent's discretion to do so, and there would have been no violation of the Rules of Professional Conduct. With respect to the victims of domestic abuse whom respondent did not notify of a decision to decline prosecution, the Director states that "[f]rom the record [she] was able to glean, those victims were not prejudiced by the lack of notice because they were still aware of their rights to obtain a harassment restraining order through other sources and some did pursue them." Respondent also points to a lack of evidence of harm to specific individuals.

Although the Director asserts that she was unable to locate any individuals harmed by respondent's neglect of the cases assigned to her, Minnesota law required respondent to make "every reasonable effort to notify a victim of domestic assault . . . that the prosecutor

has decided to decline prosecution of the case," and to notify the victim of the "method and benefits of seeking an order for protection . . . or a restraining order . . . ." Minn. Stat. § 611A.0315. Given respondent's failure to notify the victims of domestic assault of charging decisions in the cases submitted to her, whether those victims of domestic assault were harmed by respondent's inaction cannot be known with any certainty. And even if no individual was specifically harmed by respondent's neglect, we must also consider harm to the public generally, as well as to the legal profession. *Nelson*, 733 N.W.2d at 463. Although the parties are correct that respondent could have exercised her discretion to decline to prosecute the files that she left unresolved, that analysis misses the point. She did *not* exercise her discretion. The City of Fairmont and the members of its community had a right to have actual charging decisions made. Instead, for at least 135 matters, respondent took no action. Inaction is not a decision, and respondent's failure to exercise her discretion with respect to these matters caused harm to the administration of justice and to the legal profession as a whole.

Respondent urges us to consider that even if her lack of diligence may diminish the public's perception of the legal system, "such a perception . . . does not translate directly into actual harm to the system" because of the breadth of prosecutors' discretion and the contention that "[t]he public's perception may not encompass the breadth of that discretion." We reject that argument. Our system entrusts prosecutors with broad and virtually unreviewable discretion, based on the assumption that they will exercise it in the public interest. Here, respondent did not exercise her discretion at all. Even if it were established that the public lacks an understanding of the breadth of a prosecutor's

discretion—a proposition that we doubt—that would only reinforce the importance of prosecutors exercising that discretion faithfully. Accordingly, the harm that respondent caused to the legal system is real and substantial.

As noted above, in determining the appropriate discipline, we consider four factors, as well as any aggravating and mitigating factors. Here, the nature of the misconduct is serious; the cumulative weight of the disciplinary violations is consequential; and the harm to the public and to the legal profession is substantial. Although we consider respondent's remorse to be a mitigating factor, we believe that even when that mitigation is taken into account, a public reprimand is an insufficiently serious sanction for respondent's misconduct. Accordingly, we reject the parties' stipulated discipline and impose a 30-day suspension.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Respondent Elizabeth W. Bloomquist is suspended from the practice of law for a minimum of 30 days, effective 14 days from the date of this order.

2. Respondent shall pay $900 in costs pursuant to Rule 24, RLPR.

3. Respondent shall comply with Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals).

4. Respondent shall be eligible for reinstatement to the practice of law following the expiration of the suspension period provided that, not less than 15 days before the end of the suspension period, respondent files with the Clerk of the Appellate Courts and serves upon the Director an affidavit establishing that she is current in continuing legal

education requirements, has complied with Rules 24 and 26, RLPR, and has complied with any other conditions for reinstatement imposed by the court.

5. Within 1 year of the date of this order, respondent shall file with the Clerk of the Appellate Courts and serve upon the Director proof of successful completion of the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility. *See* Rule 4.A.(5), Rules for Admission to the Bar (requiring evidence that an applicant has successfully completed the Multistate Professional Responsibility Examination). Failure to timely file the required documentation shall result in automatic suspension, as provided in Rule 18(e)(3), RLPR.

Dated: March 21, 2023

BY THE COURT:

Natalie E. Hudson

Natalie E. Hudson
Associate Justice